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BULLETIN NO.

03-3

Date: **July 2003**

Subject: **Public Access to Building Plans**

Reference: **P.L. 2001, c. 404;  
Executive Orders #21 and  
#26 (2002)**

This bulletin amplifies and replaces the memorandum dated October 19, 2001 that was issued by the Department of Community Affairs to construction officials in the wake of the terrorist attacks of September 11, 2001 on the subject of building plans and building security. That memorandum provided, in essence, that building plans and specifications were not to be released, as a matter of right, to any person who might request access to them, and that any person seeking access would first have to demonstrate to the construction official that he or she had a legitimate interest in having access to the documents.

Subsequent to the issuance of the Department's memorandum, however, the "Open Public Records Act" (OPRA) became law. This was followed by the Governor's issuance of two executive orders further defining what types of documents are considered government records open to public inspection as a matter of right.

Code officials are hereby advised that the following guidelines are to be followed in responding to any request for the review of building plans and/or specifications:

1. No plans, specifications, or other information should be released in response to an OPRA request if that information could potentially be of use to any person seeking to enter the building illegally for the purpose of causing harm to persons in the building, or taking or destroying property. This would include information concerning building security, electrical and telecommunication systems, and interior configuration.
2. No plans, specifications, or other information should be released in response to an OPRA request if that information could potentially be of use to any person engaged in terrorism or sabotage, or which if disclosed, would materially increase the risk of harm from such terrorism or sabotage. This would include structural details and information concerning electrical, heating, ventilation, air conditioning, plumbing, fire protection, and water supply

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systems. Though the primary focus of terrorism and sabotage concerns would be buildings and structures in Group H, and other uses that would qualify as Life Hazard Uses under the Uniform Fire Code, the fact remains that, although terrorist attacks against this country have so far been limited to major public buildings, terrorists in other countries have targeted residential properties as well. Thus, in order to better protect all of our citizens, this information should not be released with regard to buildings or structures in any group.

3. Members of the general public always should be given access to general information such as elevations, site layout, architectural renderings, etc. This is the type of information contained in applications filed with the planning board or zoning board of adjustment that the entire community has a right to know.

4. Even in those cases where reasonable security or anti-terrorism concerns would allow denial of access to plans or portions of plans under OPRA, a local enforcing agency should still make these documents available to any person whom the construction official determines to have a legitimate need for the information. The owner, mortgagee, or contract purchaser of a property would have good reason for access, as would a contractor or agent acting with authorization from the owner.

If you have any questions or concerns in making determinations on providing public access to plans, specifications, or other information about a building in your files, please contact the Office of Regulatory Affairs at (609) 984-7672.

Persons aggrieved by a denial of a request made under OPRA may appeal to the Government Records Council in the Department's Division of Local Government Services. The Council may be contacted at (800) 480-3282 or by e-mail at [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us).

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### **Background**

The specific provisions of OPRA and Executive Order #21 relevant to disclosure of building plans and specifications are as follows:

#### ***Building Security***

The OPRA definition of a "government record," meaning a public record subject to public inspection, copying, and examination, specifically excludes both "emergency or security information or procedures for any building or facility which, if disclosed, would jeopardize security of the building or facility or persons therein," and "security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data, or software."

***Security Against Terrorism***

Executive Order #21, issued on July 8, 2002, includes a provision exempting from public inspection, copying, and examination “any government record where the inspection, examination, or copying of that record would substantially interfere with the State’s ability to protect and defend the State and its citizens against acts of sabotage or terrorism, or which if disclosed, would materially increase the risks or consequences of potential acts of sabotage or terrorism.” In Executive Order #21, the Governor also directed the Attorney General, in consultation with the Domestic Security Preparedness Task Force, to adopt regulations to determine which government records should be deemed to be confidential. These regulations have not yet been proposed. Until such time as they are, the Governor has directed that all public agencies handle government record requests in a manner consistent with the language quoted above.

***Privacy***

The first section of OPRA is a declaration of public policy that includes the statement that “a public agency has a responsibility and an obligation to safeguard from public access a citizen’s personal information with which it has been entrusted when disclosure thereof would violate the citizen’s reasonable expectation of privacy.” The Department cannot, at this time, provide more specific guidance as to the application of this language concerning privacy because the temporary Privacy Study Commission created under OPRA has not yet issued its recommendations and the Department does not have authority under OPRA or the executive orders to adopt implementing rules. At such time as the Department receives further guidance on this issue from the Attorney General or the courts, additional information will be provided.

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